

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC., a Washington  
corporation,

Plaintiff,

v.

LOGITECH INTERNATIONAL S.A., a Swiss  
corporation; LOGITECH EUROPE S.A., a  
foreign corporation; and LOGITECH, INC., a  
foreign corporation,

Defendants.

CASE NO. 2:10-cv-000300RSM

ORDER ON MOTION TO TRANSFER  
VENUE

This matter comes before the Court on Defendants' (collectively referred to as "Logitech") motion to transfer this civil action to the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1404(a). For the reasons set forth below, the Court shall GRANT the motion to transfer.

**I. FACTUAL BACKGROUND**

This case involves a contract dispute between Expeditors and Logitech. Under a contract that was negotiated in California, and renegotiated in late 2009 again in California, Expeditors was shipping goods for Logitech. On January 19, 2010, dissatisfied with Logitech's progress in paying its bills, Expeditors notified Logitech that it would be retaining possession of all of Logitech's freight currently in Expeditors possession. On that same day, Expeditors filed this suit<sup>1</sup> alleging breach of contract. A

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<sup>1</sup>This suit has been removed from Washington state court.

1 week later, on January 26, 2010, Logitech sued Expeditors in California,<sup>2</sup> demanding that Expeditors  
 2 release the seized freight. Following a hearing on February 1, the Honorable James Ware of the United  
 3 States District Court for the Northern District of California issued a preliminary injunction on February  
 4 2. The injunction required that Expeditors release Logitech's freight, and that Logitech file a  
 5 \$3,000,000 secured bond. That litigation is ongoing and involves the same set of key facts and issues as  
 6 this case.

7 Expeditors is a Washington corporation with its headquarters in Washington state. Logitech Inc.  
 8 is a California corporation with its headquarters in Fremont, California. The other two Logitech  
 9 defendants are Swiss corporations with their principal place of business in Switzerland.

## 10 II. LEGAL ANALYSIS

### 11 A. Standard of Review

12 Logitech moves to transfer this action to the California district court pursuant to 28 U.S.C. §  
 13 1404(a), which states that “[f]or the convenience of parties and witnesses, in the interest of justice a  
 14 district court may transfer any civil action to any other district or division where it might have been  
 15 brought.” The purpose of this section is to “prevent the waste ‘of time, energy, and money’ and ‘to  
 16 protect litigants, witnesses and the public against unnecessary inconvenience and expense.’” *Van Dusen*  
 17 *v. Barrack*, 376 U.S. 612, 616 (1964) (quoting *Continental Grain Co. v. The Barge FBL-585*, 364 U.S.  
 18 19, 26-27 (1960)). The statute displaces the common law doctrine of forum non conveniens with  
 19 respect to transfers between federal courts. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805  
 20 F.2d 834, 843 (9th Cir.1986). Section 1404(a) is not, however, simply a codification of the common law  
 21 doctrine. In passing § 1404(a), Congress “intended to permit courts to grant transfers upon a lesser  
 22 showing of inconvenience” than was needed for dismissal under the doctrine of forum non conveniens.  
 23 *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955).

24 The statute has two requirements on its face: (1) that the district to which defendants seek to  
 25 have the action transferred is one in which the action “might have been brought,” and (2) that the  
 26 transfer be for the convenience of parties and witnesses, and in the interest of justice. § 1404(a). There

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 28 <sup>2</sup>The California suit was instituted in state court, and has since been removed to the Northern District of California

1 is no question that this action could have been brought in the California district court. The parties are  
2 diverse, the amount in controversy exceeds \$75,000, and a nearly identical case between the same  
3 parties is already in progress in the Northern District of California. The decision to transfer, then, turns  
4 on whether the Court finds such transfer to be proper under the “convenience of parties and witnesses”  
5 and “interest of justice” standards.

6 The burden is on defendants to demonstrate that the transfer is warranted. *Saleh, et al., v. Titan*  
7 *Corporation, et al.*, 361 F.Supp.2d 1152, 1155 (C.D. Cal. 2005). “In making a decision to transfer, a  
8 court must balance the preference accorded the plaintiff’s choice of forum with the burden of litigating  
9 in an inconvenient forum. The defendant must make a strong showing of inconvenience to warrant  
10 upsetting the plaintiff’s choice of forum.” *Gherebi v. Bush*, 352 F.3d 1278, 1302 (9th Cir. 2003)

11 In determining whether a transfer is appropriate, the Court must weigh numerous factors,  
12 including (1) the location where the relevant agreements or alleged events in the lawsuit took place; (2)  
13 the state that is most familiar with the governing law; (3) the plaintiff’s choice of forum; (4) the  
14 respective parties’ contacts with the forum, and the relation of those contacts to the plaintiff’s cause of  
15 action; (5) the difference in cost of litigation in the two forums; (6) the availability of compulsory  
16 process to compel attendance of non-party witnesses; and (7) the ease of access to sources of proof.  
17 *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000). Other relevant considerations,  
18 drawn from traditional forum non conveniens analysis, are (8) the pendency of related litigation in the  
19 transferee forum; (9) the relative congestion of the two courts; and (10) the public interest in the local  
20 adjudication of local controversies. *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843  
21 (9th Cir.1986). These factors shall be considered here under the statutory requirements of convenience  
22 of witnesses, convenience of parties, and the interests of justice.

### 23 **B. Convenience of Witnesses**

24 Logitech argues that Washington state is an inconvenient location for trial by pointing out that  
25 four of its potential witnesses reside in northern California, and two of Expeditors’ potential witnesses  
26 also reside there. Expeditors counters that Logitech has failed to identify any *non-party* witnesses  
27 residing in California, so the “convenience of witnesses” factor does not favor transfer.

28 In analyzing the convenience of witnesses, the most important factor is the convenience of non-

1 party witnesses. *Saleh*, 361 F. Supp.2d at 1160. The Court should consider not only how many  
2 witnesses each side may have, but also the relative importance of their testimony. *Id.* (citing *Gates*  
3 *Learjet Corp. v. Jensen*, 743 F.2d 1325, 1335-36 (9th Cir.1984) (a forum non conveniens case)).

4 The Court concludes that this factor weighs in favor of granting the motion to transfer.  
5 Logitech's strongest evidence on this issue is its identification of Erich Weber and Gene Alger from  
6 Expeditors, as well as four Logitech employees. All of these people are potential witnesses residing in  
7 northern California. Weber is Expeditors' Account Manager and has been Expeditors' primary  
8 representative in dealings with Logitech since the inception of the agreements in question. Alger is  
9 Expeditors' Executive Vice President and the person who informed Logitech that Expeditors was  
10 seizing Logitech's freight. These two individuals could face some inconvenience if needed for trial in  
11 Washington state. Of the four Logitech individuals, the Court is not convinced at this time that the  
12 testimony of Ron Parnham or Dennis Arnow could not be provided in writing. However, Patrick  
13 Lanzing and Robert Atwood could be required to travel.

14 In sum, Logitech has identified six party witnesses who might be inconvenienced if required to  
15 travel to testify in Washington. Logitech is also correct that Expeditors has not identified *any* potential  
16 witnesses in Washington whose testimony might be required if the case were tried in California. While  
17 the most important factor in evaluating the convenience of the witnesses is the convenience of non-party  
18 witnesses, the only non-party witnesses identified for the Court reside in New York. In sum, transfer is  
19 favored based on the convenience of the witnesses. From the witnesses' standpoint, Washington is an  
20 inconvenient forum.

### 21 **C. Convenience of the Parties**

22 Logitech argues that the parties would be inconvenienced by a Washington forum not only  
23 because more witnesses are located in California, but also because many of the documents in question  
24 are located at Logitech's headquarters in California. Expeditors counters that its entire in-house counsel  
25 department, which negotiated the agreements in question, is located in Seattle. Expeditors also argues  
26 that this case does not depend much at all on "ease of access to sources of proof," as documents are  
27 easily transferable in our electronic age and this is merely a dispute about contract payments or lack  
28 thereof.

1           Regardless of where the case is tried, neither of these international companies should have much  
2 difficulty traveling to interview witnesses, transferring the relevant documents in either electronic or  
3 physical form, or complying with the local rules of the court. The Court notes in passing that the parties  
4 have not argued that there is any difference in cost of litigation in the two forums or regarding the  
5 availability of compulsory process to compel attendance of non-party witnesses. In sum, this  
6 Washington forum is inconvenient to the parties only inasmuch as the great majority of the potential  
7 party witnesses reside in northern California. Evaluation of this factor thus favors Logitech.

8 **D. The Interests of Justice**

9           Logitech argues that the interests of justice favor transfer because the California district court is  
10 already the most familiar with the dispute and because at least part of the case will be governed by  
11 California law. Expeditors counters that the California district court only ruled to release the seized  
12 freight and hold a \$3,000,000 bond, and that that ruling was not a ruling on the merits. Expeditors also  
13 argues that none of the seized goods were in California at the time, that the case might involve questions  
14 of Washington law, and that the Northern District of California's docket is more crowded than the  
15 docket of this Court. Both parties also contest vigorously how much weight the Court should give the  
16 Plaintiff's choice of forum in this case. Neither party argues that the public interest would be better  
17 served by a particular forum.

18           In considering the interests of justice, the Court weighs such factors as "ensuring speedy trials,  
19 trying related litigation together, and having a judge who is familiar with the applicable law try the  
20 case." *Heller Financial, Inc., v. Midwhey Powder Co.*, 883 F.2d 1286, 1293 (7th Cir. 1989). Judicial  
21 economy is one of the principal interest of justice considerations. *Amazon.com v. Cendant Corp.*, 404 F.  
22 Supp. 2d 1256, 1261 (W.D. Wash. 2005).

23           On motions to transfer, "[t]he courts have developed a bewildering variety of formulations on  
24 how much weight is to be given to plaintiff's choice of forum." *Saleh*, 361 F.Supp.2d at 1156 (quoting  
25 15 Wright, Miller and Cooper, Federal Practice and Procedure § 3848 at 375). Because § 1404  
26 application results in transfer, not dismissal as in forum non conveniens, a lesser showing of  
27 inconvenience is required to upset plaintiff's choice. *Id.* (citing *Norwood*, 349 U.S. at 42). Where the  
28 action has little connection with the chosen forum, less deference is accorded plaintiff's choice, even if

1 plaintiff is a resident of the forum. *Id.* (citing *Cain v. New York State Board of Elections*, 630 F. Supp.  
2 221, 227 (E.D.N.Y. 1986)); *see also Chrysler Capital Corp. v. Woehling*, 663 F.Supp. 478 (D. Del.  
3 1987); *Hernandez v. Graebel Van Lines*, 761 F. Supp. 983, 990 (E.D.N.Y. 1991).

4 The interests of justice favor transfer of this action to the Northern District of California. It is  
5 true that the Court affords some deference to Expeditors' choice to bring this case in Washington before  
6 Logitech filed its action in California. But the facts demonstrate that this case has very little connection  
7 to a Washington forum. Expeditors does not contest Logitech's assertion that the agreements in  
8 question were negotiated in California. Expeditors also does not contest that the relevant renegotiation  
9 occurred in Fremont, California. Logitech also appears to be correct that the merits of this case will be  
10 determined based on two 2007 contracts, one of which is based on California law, and one of which is  
11 based on Swiss law.

12 Finally, although the California adjudication has not progressed past the preliminary injunction  
13 phase, and although the injunction determination did not resolve the merits of that dispute, the  
14 California court did become more familiar with the dispute and the relevant documents. In issuing the  
15 injunction, the Northern District of California heard arguments and evaluated facts regarding what  
16 provisions of the parties' contracts regarded lien rights and payment requirements. The court also  
17 considered the parties' history of communication with one another, including why Logitech paid some  
18 invoices but not others, and why Expeditors decided to seize Logitech's freight. In circumstances such  
19 as this, "the goal of judicial efficiency will best be met if [the court] overlook[s] the 'first to file' rule" in  
20 deference to litigation already in progress in another district. *Church of Scientology of Cal. v. U.S.*  
21 *Dept. of the Army*, 611 F.2d 738, 750 (9th Cir. 1979). "The pendency of related actions in the  
22 transferee forum is a significant factor in considering the interest of justice factor." *Jolly v. Purdue*  
23 *Pharma L.P.*, 2005 WL 2439197 at \*2 (S.D. Cal.) (citing *A.J. Industries, Inc., v. United States District*  
24 *Court for the Central District of California*, 503 F.2d 384, 389 (9th Cir. 1974)); *Continental Grain v.*  
25 *The Barge FBL-585*, 364 U.S. at 26. "Litigation of related claims in the same tribunal is strongly  
26 favored because it facilitates efficient, economical and expeditious pre-trial proceedings and discovery  
27 and avoid[s] duplicitous [sic] litigation and inconsistent results." *Durham Productions, Inc., v. Sterling*  
28 *Film Portfolio, Ltd., Series A*, 537 F.Supp. 1241, 1243 (S.D.N.Y. 1982).

